

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ANTHONY MORGAN,)	CASE NO: 4:22-cv-1232
)	
Plaintiff,)	JUDGE
)	
v.)	
)	
XPO LOGISTICS, INC. et al.,)	<u>DEFENDANT MARIO MAURO’S NOTICE</u>
)	<u>OF REMOVAL OF CIVIL ACTION TO THE</u>
Defendants.)	<u>UNITED STATES DISTRICT COURT FOR</u>
)	<u>THE NORTHERN DISTRICT OF OHIO</u>
)	

Defendant, Mario P. Mauro (“Mauro”), by and through undersigned counsel and pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446, respectfully requests that this Court remove this action from the Court of Common Pleas, Trumbull County, Ohio to the United States District Court for the Northern District of Ohio. In support of this request, Defendant states as follows:

1. Mr. Mauro is a defendant in a civil action pending in the Court of Common Pleas, Trumbull County, Ohio, styled *Anthony Morgan v. XPO Logistics, Inc., et al.* Trumbull County Common Pleas Case No. 22-CV-00387. Plaintiff filed this action on March 30, 2022¹. The Clerk of Courts for the Court of Common Pleas, Trumbull County, Ohio, first issued a Summons upon Mr. Mauro on March 30, 2022, which came back unclaimed on April 27, 2022.² The Clerk of Courts reissued a Summons on May 6, 2022 and it was returned unclaimed on June 13, 2022. Finally, the Clerk of Courts successfully issued a Summons by regular mail on June 16, 2022 with a certificate of service.

¹ A true and accurate copy of Plaintiff's Complaint are attached hereto as Exhibit “A”.

² See the docket print out attached as Exhibit “B”.

2. The Summons and Complaint constitute all process, pleadings, and orders served upon or received by Mr. Mauro in the state court action.

3. Plaintiff's state court action also names XPO Logistics, Inc. ("XPO Logistics") as a Defendant. To date, XPO Logistics Express, LLC, improperly sued as XPO Logistics, Inc (hereinafter "XPO Logistics"), has not been served successfully. (See Ex. "B".)

4. Mr. Mauro files this timely Notice of Removal pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446.

5. Plaintiff's action stems from a motor vehicle accident on April 8, 2021, in the City of Warren, County of Trumbull, Ohio. Plaintiff has asserted claims for personal injuries and damages, including allegations that he sustained:

- a. "permanent damage" such as injuries to "his head, neck, back, and other parts of his body causing pain and permanent damage;"
- b. "medical expenses, hospital expenses" and "will incur further such expenses;"
- c. Lost earnings and his earning capacity "permanently impaired;"
- d. Pain and suffering, past and future.

(See Ex. "A".)

6. Upon information and belief, Plaintiff is an individual of the United States who resides in Warren, Ohio. As such, Plaintiff is an individual citizen of the State of Ohio. Upon information and belief, Plaintiff is not an individual citizen of any other state. (See Ex. "A".)

7. Upon information and belief, XPO Logistics is a limited liability company organized under the laws of the State of Delaware.³ Further, XPO Logistics maintains its principal place of business in Greenwich, Connecticut.

³ See the Connecticut Secretary of State Registration attached as Exhibit "C".

8. For purposes of diversity jurisdiction, a limited liability company has the citizenship of its members. *See Delay v. Rosenthal Collins Group, LLC*, 585 F.3d 1003, 1005 (6th Cir. 2009). Upon information and belief, XPO Logistics is a corporate citizen of the State of Connecticut and Delaware. XPO Logistics is not a corporate citizen of any other state.

9. Mr. Mauro resides in Merrillville, Indiana and is an individual citizen of the State of Indiana. Mr. Mauro is not an individual citizen of any other state. (See Ex. “A”.)

10. Plaintiff’s Complaint seeks an amount above \$25,000.00, and he is claiming “permanent injuries to his head, neck, back and other parts of his body,” has “lost earnings and permanent loss to future earnings,” and has experienced “pain and suffering” and “will incur further expenses [and] further pain and suffering in the future” as a result of this accident. Therefore, the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. (See Ex. “A”.)

11. Given the complete diversity of the parties’ citizenship and the amount in controversy, this Court has original subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. As such, this action is subject to removal pursuant to 28 U.S.C. § 1441.

12. Mr. Mauro has filed this Notice of Removal within thirty (30) days from the date on which it received the Plaintiff’s Complaint. Therefore, it is timely pursuant to 28 U.S.C. §1446.

13. Plaintiff has not perfected service on XPO Logistics. Upon information and belief, XPO Logistics consents to removal.

14. Mr. Mauro has served a copy of this Notice of Removal upon all parties, as well as filed it with the appropriate state court, both pursuant to 28 U.S.C. §1446.

15. Defendant asserts its right to a trial by jury.

16. Defendant does not waive any jurisdictional or other defenses available to it.

17. Defendant reserves the right to supplement this Notice of Removal and/or to present additional arguments in support of its entitlement to removal.

WHEREFORE, Mr. Mauro, prays for the removal of the above-referenced civil action from the Court of Common Pleas, Trumbull County, Ohio, to the United States District Court for the Northern District of Ohio.

Respectfully submitted,

/s/ Anthony R. Santiago

JOSEPH W. PAPPALARDO (0014326)

ANTHONY R. SANTIAGO (0096221)

Gallagher Sharp. LLP

1215 Superior Avenue, 7th Floor

Cleveland, OH 44114

(216) 241-5310 (Telephone)

(216) 241-1608 (Facsimile)

E-Mail: jpappalaro@gallaghersharp.com

asantiago@gallaghersharp.com

Attorney for Defendant Mario P. Mauro

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2022, the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by electronic and/or regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Anthony R. Santiago

JOSEPH W. PAPPALARDO (0014326)

ANTHONY R. SANTIAGO (0096221)

GALLAGHER SHARP, LLP

Attorney for Defendant Mario P. Mauro